

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

REGENTS OF THE UNIVERSITY OF
MINNESOTA,

Plaintiff,

v.

UNION PACIFIC RAILROAD
COMPANY and VERTELLUS
SPECIALTIES INC.,

Defendants.

CASE NO. 0:11-cv-00056-ADM-
JJK

**ANSWER OF DEFENDANT
VERTELLUS SPECIALTIES INC.
TO CROSS-CLAIM OF
DEFENDANT UNION PACIFIC
RAILROAD COMPANY**

Defendant Vertellus Specialties Inc. ("Vertellus"), through its undersigned counsel, hereby responds to the Cross-Claim of Defendant Union Pacific Railroad Company ("Union Pacific") as follows:

1. Paragraph 124 of the Cross-Claim asserts conclusions of law to which no response is required.
2. Paragraph 125 of the Cross-Claim asserts conclusions of law to which no response is required.
3. Paragraph 126 of the Cross-Claim asserts conclusions of law to which no response is required.
4. Paragraph 127 of the Cross-Claim asserts conclusions of law to which no response is required. To the extent a response is required, Vertellus denies the allegations in paragraph 127 of the Cross-Claim.

AFFIRMATIVE DEFENSES

5. Union Pacific fails to state a claim upon which relief may be granted against Vertellus.

6. Union Pacific's Cross-Claim is barred because the alleged injuries and damages were not proximately or legally caused by any acts or omissions of Vertellus.

7. Union Pacific has failed to mitigate any damages.

8. Union Pacific's Cross-Claim is barred to the extent Union Pacific has, by its acts and/or omissions, contributed to and/or exacerbated any contamination on the property.

9. Vertellus is not liable in contribution or indemnity to Union Pacific to the extent that the releases or threatened releases and any resulting damage were caused by the acts or omissions of third parties, and/or Plaintiff, and/or cross-claimant, over whom Vertellus had no control.

10. Vertellus is not liable in contribution or indemnity to Union Pacific to the extent that Plaintiff's recoverable response costs and the harm in relation to which they were incurred are divisible and, therefore, Vertellus is not jointly and severally liable to Plaintiff.

11. Union Pacific's Cross-Claim is barred, in whole or in part, by the doctrines of collateral estoppel and/or res judicata.

12. Vertellus relies on all of the defenses available to it under the environmental laws of the United States and the State of Minnesota, including, but not limited to, CERCLA and MERLA.

13. Vertellus reserves the right to assert any additional affirmative defenses which may be disclosed during the course of additional investigation and discovery and reserves the right to assert any defenses or matter pled by any other party to this lawsuit.

WHEREFORE, having fully answered the Cross-Complaint of Union Pacific, Vertellus respectfully requests:

- a. that the Court dismiss the Cross-Complaint and enter judgment in favor of Vertellus on all claims asserted by Union Pacific against Vertellus; and
- b. that the Court grant Vertellus any such other further relief as the Court deems just, equitable, and proper.

Dated: March 24, 2011

By: s/Richard W. Bale

Counsel for Defendant
Vertellus Specialties Inc.

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Regents of the University of Minnesota,

File No. 11-cv-00056 (ADM/JJK)

Plaintiff,

v.

CERTIFICATE OF SERVICE

Union Pacific Railroad Company and
Vertellus Specialties Inc.,

Defendants.

I hereby certify that on March 24, 2011, I caused the following document:

**ANSWER OF DEFENDANT VERTELLUS SPECIALTIES INC. TO CROSS-
CLAIM OF DEFENDANT UNION PACIFIC RAILROAD COMPANY**

to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic filing to the following:

Joy Reopelle Anderson

joy.anderson@gpmlaw.com

Rick E. Kubler

rick.kubler@gpmlaw.com

William P. Donohue

donohue@umn.edu

George W. Soule

george.soule@bowmanandbrooke.com

Debra Tsuchiyama Baker

dbaker@connellybaker.com

John Muir

jmuir@connellybaker.com

Michael Connelly

mconnelly@connellybaker.com

Brian J. Pousson

brian.pousson@bowmanandbrooke.com

Mark B. Rotenberg

markrotenberg@mail.ogc.umn.edu

Dated: March 24, 2011

MORGAN LEWIS & BOCKIUS

By s/Richard W. Bale

**ATTORNEY FOR DEFENDANT
VERTELLUS SPECIALTIES INC.**